IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.278 of 2004

Date of decision: July 11, 2007

Kulwant Singh **…Appellant.**

Versus

State of H.P. **…Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the appellant : Mr. Anup Chitkara, Advocate.

For respondent : Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Appellant has been convicted of an offence under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act, for allegedly being in exclusive and conscious possession of 1.550 kgs. of Charas and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/-, in default of payment of fine to undergo simple imprisonment for a further period of one year.

3. It is submitted by the learned counsel for the appellant that the evidence of the prosecution with regard to the total weight of the stuff is self-contradictory and this by itself makes the prosecution case doubtful, thereby entitling the appellant to acquittal. He has drawn our attention to Ex. PW-5/A, copy of entry in the *Rojnamcha* register, where the weight of the parcel containing the bulk stuff is recorded as 500

Whether reporters of the local papers may be allowed to see the judgment?

grams, though according to the testimony of the Investigating Officer, namely PW-8 SI Tameshwar Singh, and the witnesses of search and seizure, namely PW-1 Moti Ram and PW-2 Prakash, the weight is 1.550 kgs.

4. We have considered the submission in the light of the evidence on record. The abovenamed three witnesses categorically stated that the total weight of the stuff that was recovered from the appellant was 1.550 kgs. and out of this stuff two samples each weighing 25 grams had been separated. According to their testimony, the weight of the parcel containing the bulk stuff was supposed to be 1.500 kgs. PW-5 MHC Narain Singh, while in the witness-box, stated that in the entry in the *Rojnamcha* register before the figure and word "500 grams", figure and word "1 kg." are also there. The explanation given by him for the omission of the figure and word "1 kg." in the Photostat copy Ex. PW-5/A is that the register was folded and while preparing the Photostat copy, on account of the fold in the register, the aforesaid figure and word did not appear. The explanation on the face of it is incorrect, because the entry regarding weight appears below printed column No.4. There are three more columns to the left of column No.4 and entries below those three columns are there in the Photostat copy in full. However, the falsity of the explanation of the MHC should not make any difference because there is unchallenged testimony of the Investigating Officer and the abovenamed two witnesses that the weight of the stuff was 1.550 kgs.

5. Next submission that has been made on behalf of the appellant-convict is that the appellant was sent up for trial for possessing *Charas* and the *Charas*, as per definition contained in sub-clause (a) of Clause (iii) of Section 2 of the Narcotic Drugs and

Psychotropic Substances Act, means resin, in whatever form, whether crude or purified, obtained from cannabis plant and also includes concentrated preparation known as Hashish oil or liquid Hashish. It has been submitted that in the present case, as per report of the Chemical Examiner, the entire sample stuff was not resin or say *Charas*, but only a part of it, to the extent of 33.11 per cent, was resin and, hence, the appellant cannot be said to be in possession of 1.550 kgs. of *Charas*. He says that what was in possession of the appellant was not whole *Charas* but something which included *Charas* (resin) to the extent of 33.11 per cent only and the rest of the stuff was some unknown substance about which report of the Chemical Examiner is silent. He has taken us through the report of the Chemical Examiner, per which the sample contained contents of *Charas.*

6. We find ourselves in agreement with the aforesaid submission of the learned counsel for the appellant. His submission is supported by the judgment, delivered by a Division Bench of this Court, in *Dharam Pal versus State of Himachal Pradesh and another appeal (Criminal Appeal Nos.491 & 510 of 2003),* decided on 15.5.2007. In the aforesaid case, it has been held that only the resin content of the stuff is *Charas* and that in the absence of the report of the Chemical Examiner about the rest of the contents of the stuff, the quantity of the *Charas*, based on the percentage of the resin found therein by the Chemical Examiner, is required to be worked out and the appellant-accused is to be held responsible for possessing *Charas* only to the extent, the stuff contained the resin content in it.

7. As noticed hereinabove, the total quantity of stuff recovered from the appellant was 1.550 kgs. The Chemical Examiner has found resin content in it to the extent of 33.11 per cent. That

means the *Charas*/resin content in the recovered stuff was 513.21 grams. This quantity is less than the commercial quantity, as specified vide Notification No. S.O. 1055(E), dated 19th October, 2001, issued by the Central Government, even though more than the upper limit of the small quantity fixed by the same Notification. Thus, the appellant is liable to be punished not under Section 20(C) of the Narcotic Drugs and Psychotropic Substances Act, as done by the trial Court, but under Section 20(B) of the said Act for which no minimum sentence is prescribed. The offence under Section 20(B) is punishable with imprisonment that may extend to ten years and with fine which may extend to Rs.1,00,000/-. Looking to the quantity of resin/*Charas* found in the stuff recovered from the appellant, we feel that the ends of justice would be met in case his sentence is reduced from ten years rigorous imprisonment and a fine of Rs.1,00,000/- to five years rigorous imprisonment and a fine of Rs.30,000/-, in default of payment of fine simple imprisonment for a further period of six months. We order accordingly.

8. Appeal stands disposed of.

(Surjit Singh), J

July 11, 2007(sd) **(Kuldip Singh), J**